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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,345	04/09/2004	Robert J. Antonellis	345 P002	1000

7590 06/07/2006

Law Office of Marc D. Machtinger, Ltd.  
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EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/821,345	ANTONELLIS, ROBERT J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Fadok	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-225 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,10,23,30-34,76,122,129,142,149-153,183 and 184 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 2-9,11-22,24-29,35-75,77-121,123-128,130-141,143-148,154-182 and 185-225.

## **DETAILED ACTION**

### ***Response to Election***

The examiner is in receipt of applicant's response to office action mailed 2/28/2006, which was received 3/13/2006. Acknowledgement is made to the election of group IA without traverse that includes claims 1,10,23,30-34,76,122,129,142,149-153,183 and 184.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1,10,23,30-34,122,129,142,149-153 rejected under 35 U.S.C. 102(e) as being anticipated by August et al. (US 2002/0143638).**

1. An order optimization system, comprising: a device, said device being capable of communicating with an establishment computer and transmitting an order to said establishment computer (FIG 1, item 11), said establishment computer having software enabled means for receiving said order (FIG 1, item 17), assigning resources to said order (FIG 6, item 143), and commanding the fulfillment of said order (FIG 6).

10. The order optimization system according to claim 1, wherein said device is a telephone (FIG 2, item11).

23. The order optimization system according to claim 1, wherein said software enabled means for receiving said order comprises a telephony system, wherein said order is input via audible communication (FIG 2, item 16).

30. The order optimization system according to claim 1, wherein said means for receiving said order comprises software enabled mean for displaying a series of hierarchal menus on a visual display (FIG 9).

31. The order optimization system according to claim 1, wherein said means for assigning resources to said order comprises software enabled means for determining the availability of at least one limiting resource necessary to fulfill said order (FIG 6, item 141).

32. The order optimization system according to claim 31, wherein said means for determining the availability of at least one limiting resource necessary to fulfill said order comprises software enabled means for referring to a look-up table comprising information that associates different types of limiting resources with different types of orders (FIG 6, item 141).

33. The order optimization system according to claim 31, wherein said means for assigning resources to said order comprises software enabled means for determining a

set of components for said order, and software enabled means for determining the availability of at least one limiting resource necessary to fulfill each of said order components FIG 6, item 141).

34. The order optimization system according to claim 33, wherein said means for determining the availability of at least one limiting resource necessary to fulfill said order components comprises software enabled means for referring to a look-up table comprising information that associates different types of limiting resources with different order components (FIG 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 76, 183 and 184 are rejected under 35 U.S.C. 103(a) as being unpatentable over August in view of McDonald, Jr. et al (US PGPub 20020077750) and further in view of Borton (US PG pub 20020188492).**

**In regards to claim 76,** August teaches providing information about the completion and availability of orders (FIG 10), but does not specifically mention that this information along with assigned, unassigned and reassigned information is provided to a delivery driver. McDonald, Jr. teaches providing status information to delivery drivers

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(FIG 3). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in August providing scheduling information to the drivers because displaying this information to assigned drivers would prevent the driver leaving the store without all the required deliveries (Borton, page 1, para 0012).

**In regards to claims 122,129,142,149-53,183 and 184**, these claims are considered parallel claims to claims 1,10,23,30-34 and 76 and are rejected for the same rationale.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

**(571) 273-8300** [Official communications; including

After Final communications labeled

"Box AF"]

**(571) 273-6755** [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal stroke extending to the right.

Mark Fadok

Primary Examiner